

[Home](#) → [Board Info](#)

## The Water Rights Process

---

A water right is a legal entitlement authorizing water to be diverted from a specified source and put to beneficial, nonwasteful use. Water rights are property rights, but their holders do not own the water itself. They possess the right to use it. The exercise of some water rights requires a permit or license from the State Water Resources Control Board (State Water Board), whose objective is to ensure that the State's waters are put to the best possible use, and that the public interest is served.

In making decisions, the State Water Board must keep three major goals in mind:

- developing water resources in an orderly manner;
- preventing waste and unreasonable use of water; and
- protecting the environment.

The State Water Board's duties are by no means limited to permits and licenses. It may be called upon to adjudicate water for entire systems or to act as a "referee" or fact-finder in court cases involving water rights. These activities are described later.

- [Water Right Law](#)
- [GroundWater Rights](#)
- [The Permit Process](#)
- [Additional Duties](#)
- [Public Trust](#)
- [Complaints](#)
- [Water Transfers](#)
- [Flowcharts](#)

### Water Right Law

Water right law in California and the rest of the West is markedly different from the laws governing water use in the eastern United States.

Seasonal, geographic, and quantitative differences in precipitation caused California's system to develop into a unique blend of two very different kinds of rights: riparian and appropriative. Other types of rights exist in California as well, among them reserved rights (water set aside by the federal government when it reserves land for the public domain) and pueblo rights (a municipal right based on Spanish and Mexican law).

Riparian rights usually come with owning a parcel of land that is adjacent to a source of water. With statehood, California adopted the English common law familiar to the eastern seaboard; such law also included the riparian doctrine.

A riparian right entitles the landowner to use a correlative share of the water flowing past his or her property. Riparian rights do not require permits, licenses, or government approval, but they apply only to the water which would naturally flow in the stream. Riparian rights do not entitle a water user to divert water to storage in a reservoir for use in the dry season or to use water on land outside of the watershed. Riparian rights remain with the property when it changes hands, although parcels severed from the adjacent water source generally lose their right to the water.

Water right law was set on a different course in 1849, when thousands of fortune seekers flocked to California following the discovery of gold. Water development proceeded on a scale never before witnessed in the United States as these "49ers" built extensive networks of flumes and waterways to work their claims. The water carried in these systems often had to be transported far from the original river or stream. The self-governing, maverick miners applied the same "finders-keepers" rule to water that they did to their mining claims. It belonged to the first miner to assert ownership.

To stake their water claims, the miners developed a system of "posting notice" which signaled the birth of today's appropriative right system. It allowed others to divert available water from the same river or stream, but their rights existed within a hierarchy of priorities. This "first in time, first in right" principal became an important feature of modern water right law.

In 1850, California entered the Union as the thirty-first state. One of the first actions taken by its lawmakers was to adopt the common law of riparian rights. One year later, the Legislature recognized the appropriative right system as having the force of law. The appropriative right system continued to increase in use as agriculture and population centers blossomed and ownership of land was transferred into private hands.

The conflicting nature of California's dual water right system prompted numerous legal disputes. Unlike appropriative users, riparian right holders were not required to put water to reasonable and beneficial use. This clash of rights eventually resulted in a constitutional amendment (Article X, Section 2 of the California Constitution) that requires all use of water to be "reasonable and beneficial." These "beneficial uses" have commonly included municipal and industrial uses, irrigation, hydroelectric generation, and livestock watering. More recently, the concept has been broadened to include recreational use, fish and wildlife protection, and enhancement and aesthetic enjoyment.

Up to the early 1900's appropriators – most of them miners and nonriparian farmers – had simply taken control of and used what water they wanted. Sometimes notice was filed with the county recorder, but no formal permission was required from any administrative or judicial body.

The Water Commission Act of 1914 established today's permit process. The Act created the agency that later evolved into the State Board and granted it the authority to administer permits and licenses for California's surface water. The act was the predecessor to today's water Code provisions governing appropriation.

These post-1914 appropriative rights are governed by the aforementioned hierarchy of priorities developed by the 49ers. In times of shortage the most recent ("junior") right holder must be the first to discontinue such use; each right's priority dates to the time the permit application was filed with the State Board. Although pre- and post-1914 appropriative rights are similar, post-1914 rights are subject to a much greater degree of scrutiny and regulation by the Board.

Riparian rights still have a higher priority than appropriative rights. The priorities of riparian right holders generally carry equal weight; during a drought all share the shortage among themselves.

## Ground Water Rights

In most areas of California, overlying land owners may extract percolating ground water and put it to beneficial use without approval from the State Board or a court. California does not have a permit process for regulation of ground water use. In several basins, however, groundwater use is subject to regulation in accordance with court decrees adjudicating the ground water rights within the basins.

The California Supreme Court decided in the 1903 case *Katz v. Walkinshaw* that the "reasonable use" provision that governs other types of water rights also applies to ground water. Prior to this time, the English system of unregulated ground water pumping had dominated but proved to be inappropriate to California's semiarid climate. The Supreme Court case established the concept of overlying rights, in which the rights of others with land overlying the aquifer must be taken into account. Later court decisions established that ground water may be appropriated for use outside the basin, although appropriator's rights are subordinate to those with overlying rights.

## The Permit Process

Permittees run the gamut from water districts and electric utilities to farmers and ranchers. Besides riparian right holders and ground water users, permits are not required of users of purchased water or those who use water from springs or standing pools lacking natural outlets on the land where they are located. However, unauthorized appropriation of water is against the law and can result in court action and fines.

Water right permits carefully spell out the amounts, conditions, and construction timetables for the proposed water project. Before the Board issues a permit, it must take into account all prior rights and the availability of water in the basin. The Board considers, too, the flows needed to preserve instream uses such as recreation and fish and wildlife habitat. Records of water appropriation and use statewide are maintained by the State Board's Division of Water Rights.

To obtain a permit, the prospective appropriator must follow these steps:

- Filing an Application. The process is initiated when a permit application is filed by the person or agency desiring to divert water. This application specifically describes the proposed project's source, place of use, purpose, point(s) of diversion and quantity to be diverted.
- Acceptance of Application. The Board notifies the applicant within 30 days whether the application is incomplete or accepted. Acceptance establishes priority as the date of filing.
- Environmental Review. Consideration of environmental effects is required by the California Environmental Quality Act before a permit can be issued. Large projects that could endanger or degrade natural habitat or water quality usually require preparation of an Environmental Impact Report. The Board examines the proposed project's potential environmental impacts and determines whether conservation measures will be needed.

- Public Notice. The State Board then publishes a notice of the applicant's intent and invites comment. Copies of any protests are given to the applicant who is required to respond.
- Protest Resolution. The Board takes actions to resolve any protests that have been filed. If both parties can agree to mutually acceptable conditions, the protest is resolved at this point in the process. In the event it is not resolved for small projects, the issue may be solved through an engineering field investigation report from the Board's Division of Water Rights. For appeals from the report and for large projects, a formal hearing is held before one or more members of the State Board. The Board's decision is based upon the record produced by the hearing.
- Permit Issuance. Two initial Board findings are required before a permit can be issued: that unappropriated water is available to supply the applicant, and that the applicant's appropriation is in the public interest, a concept that is an overriding concern in all Board decisions. The permit is then issued if the Board determines that the proposed use of water best meets these criteria. If it determines otherwise, conditions may be imposed to ensure they are satisfied or the application may be denied. In most cases, the applicant is required to begin project construction within two years of permit issuance.

Other conditions are placed on the permit, such as construction completion dates and when water use is to be completed. The permittee may petition for an extension. Unlike riparian rights, appropriative rights are quantified as the maximum amount that would ultimately be needed by the proposed project (or "beneficial use[s]"), for as long a time as the project is deemed reasonable and diligently pursued.

Any change in purpose, place of use, or point of diversion requires Board approval. The proposed change cannot initiate a new right or injure any other legal user of water.

- Licensing. When the project is completed, the terms of the permit have been met and the largest volume of water under the permit is put to beneficial use, the Board confirms the terms and conditions and issues a license to the appropriator. This license is the final confirmation of the water right and remains effective as long as its conditions are fulfilled and beneficial use continues.

The Board has the authority to enforce the conditions of both permit and license and is empowered to revoke either in case the conditions are not met. Other, less severe action may be taken or the Board may issue a cease and desist order to ensure that the terms are complied with in a timely fashion.

### Additional Duties

The State Board has several other major water right responsibilities in addition to administering the permit and licensing system. These duties include statutory adjudication and court reference. Statutory adjudication is a process by which the comprehensive determination of all water rights in a stream system is made. This happens if a claimant petitions the State Board for an adjudication and the Board finds the action necessary and in the public interest. The California Supreme Court has held that claimants or petitioners can include not only water users, but also those seeking recognition of public trust values on a streamwide basis.

After granting the petition, State Board staff investigates the matter and issues a report which includes a draft Order of Determination. A hearing is then held on objections to the draft report, after which the State Board adopts a final Order of Determination and files it with the appropriate Superior Court. Objections to the final order are heard in a court hearing, after which the court may determine their merits. The final step is a court decree that determines all water rights within the disputed system.

The State Board may also be called upon to act as a "referee" in water right lawsuits, either recommending a decision on the entire case in dispute or answering questions of physical fact. Board staff carefully studies the matter, then issues a draft report to which the interested parties may file objections; a hearing on these objections is authorized but is not required by law. The Board's report becomes evidence, but the court is also required to hear any other evidence offered in rebuttal.

### Public Trust

As increasing emphasis is placed on protecting instream uses – fish, wildlife, recreation and scenic enjoyment – surface water allocations are administered under ever-tightening restrictions, posing new challenges and giving new direction to the State Board's water right activities.

Under the public trust doctrine, certain resources are held to be the property of all citizens and subject to continuing supervision by the State. Originally, the public trust was limited to commerce, navigation and fisheries, but over the years the courts have broadened the definition to include recreational and ecological values.

In a landmark case, the California Supreme Court held that California water law is an integration of both public trust and appropriative right systems, and that all appropriations may be subject to review if "changing circumstances" warrant their reconsideration and reallocation. The courts also have concurrent jurisdiction in this area. At the same time, it held that like other uses, public trust values are subject to the reasonable and beneficial use provisions of the California Constitution.

The difficulty comes in balancing the potential value of a proposed or existing water diversion with the impact it may have on the public trust. After carefully weighing the issues and arriving at a determination, the Board is charged with implementing the action which would protect the latter. The courts also have concurrent jurisdiction in this area. As with all the other pieces of the California water puzzle, allocating the limited resource fairly and impartially among many competing users represents one of the Board's greatest challenges.

## Complaints

The State Board also is responsible for investigating possible illegal, wasteful or unreasonable uses of water, either in response to a complaint or on the State Board's own initiative. If the State Board's staff investigation determines that a misuse of water is occurring, the Board generally notifies the affected persons and allows a reasonable period of time to terminate the misuse. The State Board may also hold a hearing to determine if a misuse of water has occurred or is occurring. Water users who do not terminate a misuse of water are subject to various administrative enforcement measures including possible fines and revocation of a permit or license. In appropriate cases, the State Board may also seek judicial relief in the courts.

## Water Transfers

In recent years, temporary transfers of water from one water user to another have been used increasingly as a way of meeting statewide water demands, particularly in drought years. Temporary transfers of post 1914 water rights are initiated by petition to the State Board. If the Board finds the proposed transfer will not injure any other legal user of water and will not unreasonably affect fish, wildlife or other instream users, then the transfer is approved. If the Board cannot make the required findings within 60 days, a hearing is held prior to Board action on the proposed transfer. Temporary transfers are defined to be for a period of one year or less. A similar review and approval process applies to long-term transfers in excess of one year.

[Conditions of Use](#) | [Privacy Policy](#)   
Copyright © 2017 State of California

The California Water Boards include the [State Water Resources Control Board](#) and nine [Regional Boards](#)  
The State Water Board is one of five environmental entities operating under  
the authority of the California Environmental Protection Agency  
[Cal/EPA](#) | [ARB](#) | [CalRecycle](#) | [DPR](#) | [DTSC](#) | [OEHHA](#) | [SWRCB](#)